

REMARKS

Traversal and Request for Withdrawal

The restriction requirement of July 11, 2008 alleges that the claims under consideration include multiple distinct inventions.

According to PTO rules, every proper restriction requirement has two aspects:

- (A) the reasons, as distinguished from the mere statement of conclusion, why each invention as claimed is either independent or distinct from the other(s); and
- (B) the reasons why there would be a serious burden on the examiner if restriction is not required, i.e., the reasons for insisting upon restriction.¹

The particular reasons relied on by the examiner for holding that the inventions as claimed are either independent or distinct should be concisely stated. A mere statement of conclusion is inadequate; the reasons upon which the conclusion is based should be given.² Each relationship of claimed inventions should be similarly treated and the reasons for the conclusions of distinctness or independence set forth.³

Further, where the related inventions as claimed are shown to be independent or distinct, the examiner, to establish reasons for insisting upon restriction, must explain why there would be a serious burden on the examiner if restriction is not required. Thus the examiner must show by appropriate explanation one of the following:

(A) Separate classification: the examiner must show that each alleged invention is recognized in the art as a separate subject for inventive effort requiring a separate field of search, but the examiner need not cite patents to show separate classification.

(B) Separate status in the art when they are classifiable together: the examiner must show that even though the alleged inventions are classified together, each alleged invention can be shown to have formed a separate subject for inventive effort. The examiner must show a recognition of separate inventive effort by inventors. The examiner may show separate status in the art by citing patents which are evidence of such separate status, and may also show of a separate field of search.

¹ MPEP 808.

² MPEP 808.01.

³ MPEP 808.01.

(C) Different field of search: the examiner must show that it is necessary to search for one of the inventions in a manner that is not likely to result in finding art pertinent to the other invention(s) (e.g., searching different classes/subclasses or electronic resources, or employing different search queries a different field of search is shown, even though the two are classified together). The examiner must show that the indicated different field of search must in fact be pertinent to the type of subject matter covered by the claims.

Restriction Between Inventions

Regarding the restriction requirement between allegedly independent or distinct inventions, the applicants respectfully submit that the office action does not properly support the restriction requirement. To support the position that the claimed inventions are distinct, the office action reads that “the independent claims in each Group I-II recite limitations that are not found together in a common independent claim of the other group, thus it is evidence that Applicant believes a distinct invention combination lies within each set of independent claims.” This statement does not support the requirement that the subcombinations are usable together in a single combination as noted in the office action itself. Thus, the office action fails to provide proper analysis to support the restriction and thus offers nothing but unsupported conclusions.

Second, the office action does not support the requirement of providing reasons why there would be a serious burden on the examiner. The office action merely asserts that “the inventions have acquired a separate status in the art in view of their different classification”. The office action must show, however, that the indicated different field of search must in fact be pertinent to the type of subject matter covered by the claims. No such showing is provided. As such, the “reason” stated in the office action cannot be distinguished from a mere statement of conclusion. Additionally, multiple searches have already been performed by the examiner in June 2006, in February 2007, and in August 2007. The fact that multiple searches have been performed should alleviate any burden on the examiner that could necessitate a restriction requirement.

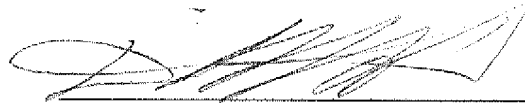
Accordingly, the unsupported conclusory statement in the office action does not properly support restriction between the alleged inventions and the applicant respectfully traverses on this basis. The applicants provisionally elect the claims identified in the office action as "Invention I", claims 1-29, 39, and 40, which read on the elected invention. Nothing in this response should be construed as an assertion that the disclosed and claimed inventions are not patentably distinct from one another; the traversal is instead based on the failure to fulfill the requirements to support the restriction.

CONCLUSION

Withdrawal of the restriction requirement and consideration and allowance of all pending claims are respectfully requested. If there are any questions or concerns, please contact the undersigned at the telephone number indicated below.

Respectfully submitted,

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Daniel J. Noblitt
Reg. No. 35,969

The Noblitt Group, PLLC
4800 North Scottsdale Road
Suite 6000
Scottsdale, Arizona 85251
Telephone: 480.994.9859
Facsimile: 480.994.9025